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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,415	11/03/2003	Aline Abergel	231191US26	2252
22850	7590	05/16/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			WEEKS, GLORIA R	
		ART UNIT	PAPER NUMBER	
		3721		

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/698,415	ABERGEL, ALINE	
	Examiner	Art Unit	
	Gloria R Weeks	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 March 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-16, 18 and 25-33 is/are pending in the application.
 - 4a) Of the above claim(s) 25-28 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-16, 18 and 29-33 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Response to Amendment

1. This action is in response to Applicants' amendment received on March 9, 2005.

Election/Restrictions

2. Newly submitted claims 25-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the limitations of claims 25-28 are drawn towards a distinct and independent embodiment, shown in figures 4 and 5, wherein unlike the current pending claims 1-18, the adhesive sheet is restricted to the internal surfaces of the support and lid, when the support and lid are in a closed position.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 25-28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 8-9, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (Pub. No. US 2004/0003825) in view of Coburn, Jr. (USPN 4,491,389).

In reference to claims 1-6, 8-9, 13 and 14, Kelly discloses a device for packaging a product comprising: a flat support (14) including at least one cavity (14a) that passes at least

partially through the support (14) and opens on a first face of the support (14) through a first opening, and wherein the cavity (14a) contains a cosmetic product (12); a flat lid (16) articulated to the support (14) by a thermoplastic and/or metallic sticker (24) adhesively bonded (page 2 paragraph 21) onto one of the faces of the lid (16) and onto one of the faces of the support; wherein the lid (16) can rest on the support (14) so as to at least partly cover the first face of the support (14) in which the first opening (14a) opens wherein the adhesive sheet (24) closes off a second opening in the support which contains the product (12; page 3 paragraph 27). Although Kelly discloses using a metallic sticker to articulate the support to the lid, Kelly does not disclose the sticker forming a mirror.

Coburn, Jr. teaches a device does not disclose the adhesive sheet as being a thermoplastic (28) with a layer of paint (30) forming a mirror, wherein the term paint is defined as a thin dry film formed from a liquid mixture having a solid pigment. It would have obvious to one having ordinary skill in the art at the time of the invention to modify the device of Kelly to include the mirror of Coburn, Jr. for the purpose of reducing cost. The use of such mirrors is also well known in the art of toys for the purpose of increasing safety by removing the need to use glass for reflective or mirror surfaces.

Regarding claims 11-12, Kelly does not disclose the specific dimensions or thickness of the lid and support. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a lid and support having a thickness of .5 mm-2 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

5. Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (Pub. No. US 2004/0003825) in view of Coburn, Jr. (USPN 4,491,389) as applied to claims 1 and 14 above, and further in view of Guiard (WO 97/15910).

With respect to claim 10, Kelly discloses a device for packaging a product, the device having a support with a cavity capable of being covered by a lid, wherein the lid is articulated to the support. Kelly does not disclose a removable cover for the cavity in addition to the lid. Guiard teaches a packaging device including a platform having a cavity (16) with a removable cover (26). It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the device of Kelly to include the removable cover of Guiard for the purpose of protecting the cosmetic product prior to use.

In reference to claim 15, Kelly discloses a device for packaging a produce, the device having a support with a cavity in the shape of a rectangle. Kelly does not disclose the cavity being in the shape of a circle. It would have been an obvious matter of design choice to modify the shape of the cavity of Kelly, since applicant has not disclosed that the cavity being in the shape of a circle solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the cavity in the shape of a rectangle. Furthermore, Guiard teaches a packaging device including a platform having a circular cavity.

Guiard teaches a device for packaging a product comprising: a flat support (12) including at least one cavity (16) that passes through the support (12) and opens on a first and second face of the support (12), and wherein the cavity contains a cosmetic product (20); a sticker (26) forming a mirror (made of foil which is a reflective material) adhesively bonded to a first face of the support (12); and an adhesive sheet (22) fixed to a second face of the support (12) whereby the adhesive sheet closes off the cavity of the support (12). It would have been obvious to one

having ordinary skill in the art at the time of the invention to modify the device of Kelly to include the mirror sticker on the support of Guiard for the purpose of protecting the product contained in the cavity of the support.

6. Claims 7, 16, 18 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (Pub. No. US 2004/0003825) in view of Guiard (WO 97/15910).

With respect to claim 7, Kelly does not disclose printed matter on the adhesive sheet that articulates the lid to the support. Nevertheless, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide printed matter on the sheet or sticker adhesively bonded to the lid and support since Examiner takes Official Notice that it is well known in the art of packaging to provide an adhesive label with a printed design to the outside surface of a package for the purpose of decoration or disclosing the contents of the package.

In reference to claims 16 and 33, Kelly discloses a device for packaging a product comprising: a flat support (14) including at least one cavity (14a) that passes at least partially through the support (14) and opens on a first face of the support (14) through a first opening, and wherein the cavity (14a) contains a cosmetic product (12); a flat lid (16) articulated to the support (14) by a thermoplastic and/or metallic sticker (24) adhesively bonded (page 2 paragraph 21) onto one of the faces of the lid (16) and onto one of the faces of the support. Kelly does not disclose the at least one cavity having a first and second opening.

Guiard teaches a device for packaging a product comprising: a flat support (12) including at least one cavity (16) that passes through the support (12) and opens on a first and second face of the support (12), and wherein the cavity contains a cosmetic product (20); and an adhesive sheet (22) fixed to a second face of the support (12) whereby the adhesive sheet closes off the

cavity of the support (12). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Kelly to include the cavity of Guiard, having a first and second opening, for the purpose of providing capability to insert and remove a tray of cosmetic product from the cavity.

Guiard further discloses providing an adhesive sheet directly over the second opening of the cavity. It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the package of Kelly to include the covered cavity of Guiard for the purpose of securing a removable tray to the support and lid of the package.

Regarding claim 18, Kelly discloses a packaging device comprising a support (14) with a first opening creating a cavity (14a), the cavity (14a) containing a make-up product (12), but does not disclose applying a removable cover over the first opening. Guiard teaches a packaging device comprising a support (12) with a first opening creating a cavity (16), the cavity (16) containing a make-up product (20), the packaging device further having a removable cover (26) attached to the first opening. It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the packaging device of Kelly to include the removable cover of Guiard for the purpose of protecting the make-up product prior to use.

7. Claims 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (Pub. No. US 2004/0003825) in view of Guiard (WO 97/15910) as applied to claim 16, and further in view of Coburn, Jr. (USPN 4,491,389).

With respect to claims 29-32, Kelly in view of Guiard discloses adhesive foil sheets, which has reflective qualities and is capable of acting as a mirror, but does not disclose the specifics of the composition of the foil sheet. Coburn, Jr. teaches a device does not disclose the adhesive sheet as being a thermoplastic (28) with a layer of paint (30) forming a mirror, wherein

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the term paint is defined as a thin dry film formed from a liquid mixture having a solid pigment. It would have obvious to one having ordinary skill in the art at the time of the invention to further modify the device of Kelly to include the mirror of Coburn, Jr. for the purpose of reducing cost. The use of such mirrors is also well known in the art of toys for the purpose of increasing safety by removing the need to use glass for reflective or mirror surfaces.

Response to Arguments

8. Applicant's arguments filed March 9, 2005 have been fully considered but they are not persuasive.

Applicant has argued that Kelly fails to disclose a container in which the lid and the support are articulated to each other by a sticker which forms a mirror, with the sticker bonded to one of the faces of the lid and one of the faces of the support. Examiner has found that Kelly's disclosure of bonding a metallic foil to the lid and the support of a container, meets the Applicant's limitation of providing a sticker that forms a mirror. With the term mirror being defined as something worthy of imitation or reflection, Examiner contends that it is well known that metallic foils provide reflective surfaces, thereby acting as a mirror.

Applicant also argues that Guiard does not overcome the mirror deficiencies of Kelly. Examiner reiterates the above argument regarding the reflective qualities of the metallic foil used by both Kelly and Guiard. Moreover, Examiner relied upon the disclosure of Coburn, Jr. to support the argument that it is well known in the art of cosmetic container production to utilize a metallic sticker or paint to provide a low-cost mirror or reflecting surface.

Applicant further argues that Kelly and Guiard fail to disclose or suggest the features of the claim 16, as neither references teaches an adhesive sheet which provides an articulation

between a lid and a support, with the adhesive sheet also closing off a second opening of a cavity, and with a portion of the adhesive sheet which closes the second opening directly facing the product contained in the cavity. Applicant's arguments with respect to claim 16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks
Examiner
Art Unit 3721

GRW
May 3, 2005


Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700